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8

9 **UNITED STATES OF AMERICA**
10 **BEFORE THE NATIONAL LABOR RELATIONS BOARD**
11 **SAN FRANCISCO DIVISION OF JUDGES**

12 TESLA, INC.,

13 Respondent,

14 and

15 MICHAEL SANCHEZ, an Individual,

16 Charging Party,

17 and

18 JONATHAN GALESCU, an Individual,

19 Charging Party,

20 and

21 RICHARD ORTIZ, an Individual,

22 Charging Party,

23 and

24 INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
25 AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, AFL-CIO,

26 Charging Party.
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Case Nos. 32-CA-197020
32-CA-197058
32-CA-197091
32-CA-197197
32-CA-200530
32-CA-208614
32-CA-210879
32-CA-220777

**CHARGING PARTIES' OPPOSITION
TO RESPONDENT TESLA, INC.'S
REQUEST FOR 30-DAY EXTENSION
FOR FILING POSTHEARING BRIEF
PURSUANT TO 29 C.F.R. § 102.42**

1 Charging Parties oppose Respondent Tesla, Inc.'s request for a 30-day extension to file
2 post-hearing briefs because this proceeding has already been unreasonably delayed by the
3 Respondent, does not present complex or novel legal issues or facts, and involves an alleged
4 unlawfully terminated employee who has been waiting over a year for a remedy. While Counsel
5 for Charging Parties generally believes in extending professional courtesy, in this case we have
6 done so throughout, and we must consider the nature of the case and courtesy towards the
7 dismissed employee, which is paramount. Further, Respondent has provided shifting
8 justifications for this request, previously asserting to Charging Parties that the reason for this
9 request was scheduling conflicts, while arguing now that the delay is necessary because of the
10 size and complexity of the case. We also concur in the position of the General Counsel, filed
11 October 23, 2018.

12 **I. Procedural History**

13 On April 19, 2017, Charging Parties Richard Ortiz, Michael Sanchez, Jonathan Galescu,
14 and The International Union, United Automobile, Aerospace, and Agricultural Implement
15 Workers of America ("UAW") filed charges against Respondent. The General Counsel issued a
16 Complaint based on those charges on September 1, 2017 and scheduled a hearing for
17 November 14, 2017. On or about October 23, 2017, Charging Party UAW filed a new unfair
18 labor practice charge alleging Respondent terminated Mr. Ortiz and disciplined employee Jose
19 Moran for engaging in protected activity and other violations of the Act. After postponing the
20 hearing for an investigation of these new charges, the General Counsel issued a Consolidated
21 Complaint on March 30, 2018 and set a hearing date for June 11, 2018.

22 Before the onset of the hearing, Counsel for Respondent indicated to the General Counsel
23 and Charging Parties his unavailability during parts of June, and requested the parties postpone
24 the hearing date. Counsel for Charging Party indicated she was available all dates, excluding
25 religious holidays. Seeking however to have an uninterrupted hearing, Counsel for Charging
26 Parties agreed to a joint request to postpone the June 11, 2018 hearing, which was denied. At the
27 commencement of the hearing on June 11, 2018, the first available date to resume the hearing was
28 September 24, 2018, partly because of Respondent's Counsel's unavailability. Again, Counsel

1 for Charging Party indicated she was available all dates, excluding religious holidays. Following
2 the end of proceedings on September 28, 2018, the hearing was again postponed to October 9,
3 2018, due to Respondent's Counsel's unavailability.

4 Following the close of hearing on October 12, 2018, Judge Tracy set the deadline for
5 filing of post-hearing briefs on November 16, 2018, thirty-five (35) days after the close of the
6 hearing. Counsel for Respondent did not raise any issue with this date before Judge Tracy.

7 On October 17, 2018, Counsel for Respondent emailed Counsel for Charging Party and
8 the General Counsel requesting a 30 day extension because he had not received the trial
9 transcript, had "multiple out of town arbitrations, meetings, and negotiations that were put off due
10 to the trial[s], and need[ed] to be out of the country and then back East for some time." Charging
11 Parties declined to agree to an extension of time.

12 **II. Respondent's Request For Extension to File Its Post-Hearing Brief Should Be**
13 **Denied.**

14 Under 29 C.F.R. § 102.42, the maximum amount of time an Administrative Law Judge
15 can grant for the filing of post-hearing briefs is thirty-five (35) days. The NLRB Bench Book,
16 § 15-500, states, "the Board and its chief judges will not lightly grant postponements for the
17 submission of briefs."

18 First and foremost, this proceeding involves allegations that Respondent unlawfully
19 terminated an employee – Charging Party Richard Ortiz – because he engaged in activity
20 protected by the Act. Any delay prejudices Charging Party Ortiz by postponing possible
21 remedies of reinstatement and backpay. Since his termination, Mr. Ortiz has faced
22 unemployment and financial hardship and struggled to support himself and his family. Further,
23 Mr. Ortiz's termination occurred during a union organizing campaign at Respondent's facility,
24 and Mr. Ortiz was one of the most prominent leaders of that campaign. His continued absence
25 from the facility chills the organizing campaign and frustrates the purposes of the Act.

26 Second, this case does not present complex or novel issues. The allegations involve two
27 Section 8(a)(3) claims, the discharge of Mr. Ortiz and discipline of Mr. Moran, based on conduct
28 that is not in dispute. The remaining claims are entirely based on Section 8(a)(1) and, as

1 Respondent's own list on page 2 of its motion shows, are hardly novel or complex. Further, while
2 this case involves allegations of unlawful conduct conducted through Twitter, the parties were
3 able to reach a stipulation rather than rely on dueling experts.

4 Third, while the Respondent complains of the volume of the record and exhibits, the
5 majority of the General Counsel's case-in-chief was presented in June 2018, giving the
6 Respondent several *months* to prepare its post-hearing arguments. Further, Respondent's
7 purported lack of access to the transcripts rings hollow, as the Court Reporter eScribers,
8 LLC informed Charging Parties on October 19, 2018 that the transcript for the final week of
9 hearing was complete and available for immediate electronic transfer.

10 The Counsel for Respondent alludes to various scheduling issues to justify an extension,
11 yet fails to provide any specific conflicts or unavailability. Lawyers commonly juggle multiple
12 matters and clients, but this does not excuse meeting deadlines, especially in a case where
13 Respondent featured no less than five lawyers in the hearing room during proceedings and Lead
14 Counsel's law firm employs over 820 attorneys. Respondent has also provided shifting
15 justifications for this extension, first asserting to Charging Parties on October 17, 2017 that the
16 reason for this request was scheduling conflicts, but then filing for an extension request based
17 primarily on the size and complexity of the case.

18 Finally, Respondent's motion contains numerous misstatements and exaggerations that are
19 not based on the record in this case. Such statements are wholly inappropriate, especially in a
20 request for extension. While we do not agree with the Respondent's characterization of the case,
21 we will allow the record to speak for itself.

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1 **III. Conclusion**

2 For the reasons stated above, Charging Parties respectfully request that Respondent's
3 request for a 30-day extension for filing post-hearing briefs be denied.

4
5 DATED: October 25, 2018 SCHWARTZ, STEINSAPIR, DOHRMANN
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